

MISC. CRIMINAL APPLICATION NO. 4610 OF 1994.

Date of decision: 24.4.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. V.M. Barot, advocate for petitioner, absent.

Mr. P.B. Majmudar, advocate for respondent No.1, absent.

Mr. S.R. Divetia, A.P.P., for respondent No.2- State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

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April 24, 1996.

Oral judgment:

On call none is present on behalf of the parties except Mr. S.R. Divetia, learned A.P.P. for respondent No.2- State of Gujarat.

As the prosecution failed to submit charge-sheet within the stipulated period prescribed under Section 167 (2) of the Criminal Procedure Code ('the Code' for short), respondent No.1 preferred Criminal Misc. Application No.557 of 1994 in the Court of Sessions Judge, Kachchh at Bhuj under Section 439 read with Section 167 (2) of the

Code for bail. Admittedly, no charge-sheet has been submitted in Court within the stipulated period and, therefore, the learned Judge relying upon several authorities passed appropriate order releasing respondent No.1 on bail. Such orders are popularly known as 'default bail'. Admittedly, respondent No.1 was arrested on 24.12.1993 for commission of alleged offences under the Customs Act ('the Act' for short) yet no charge-sheet was filed within 60 days expiring on 22.2.1994. The law is well settled that on account of failure of prosecution to submit charge-sheet within stipulated period, right accrues in favour of accused to be released on bail irrespective of nature of offence. It is true that respondent No.1 was arrested by prosecution in connection with seizure of silver worth Rs. 6 crores approximately. The silver was seized and recovered from two trucks passing through Bachav check post and were checked on the strength of previous information. As alleged, at the relevant time, only six persons could be arrested as rest had fled away taking benefit of darkness.

I have carefully gone through the order passed by the learned Judge. In my view, the learned Judge has not committed any error in passing the order of 'default bail' taking recourse of provisions contained in Section 167 (2) of the Code. While exercising jurisdiction, learned Judge has also relied upon number of judgments of the Supreme Court as well as High Courts, including passed by this High Court upholding the right of accused to get bail when the prosecution fails to complete investigation and charge-sheet within the stipulated period. Thus, in light of clear evidence on record, irrespective of nature of offence, right had accrued in favour of respondent No.1 for getting default bail. The right was exercised by respondent No.1 after its accrual. Even till date of the decision also no such charge-sheet has been submitted and, therefore, right which has already accrued on expiry of statutory period does not get extinguished. Consequently, the discretion should be exercised in favour of respondent No.1.

In the result, the application is devoid of merits and is hereby dismissed. Rule is discharged.